vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5591 OF 2007

Shivaji Gangaram Patil ... Petitioner

V/s.

N.R.C. Ltd. & Ors. ... Respondents

Ms.S.K. Chopda a/w Mr.T.R. Yadav for Petitioner
Mr.P.M. Palshikar for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 14, 2007**

P.C.:

. The petitioner has challenged an interim order passed by the Industrial Court refusing interim relief to the Petitioner. The revision application filed by the petitioner has also met with the same fate. Hence, the present writ petition.

2. According to the petitioner, he has been suspended from April 12, 1997 for over 10 years for a misconduct which does not warrant this treatment from the employer. After the chargesheet was issued to the Petitioner, he submitted his reply to the management, indicating that he had not committed any act of misconduct for which he should be subjected to a domestic enquiry. However, an enquiry was initiated against him and the enquiry officer’s report has been furnished to the Petitioner.

3. The petitioner filed complaint (ULP) No.146 of 1998 under Items 1(b), (e), (f) and (G) of Schedule IV of the MRTU & PULP Act on 27.2.1998 challenging the enquiry and the proposed order of dismissal or discharge. It was contended in that complaint that the action taken in suspending the petitioner and holding an enquiry against him was incorrect. It was also pleaded that the enquiry instituted against him was not conducted in consonance with the principles of natural justice and, therefore, interim relief was sought. It must be noted here that the services of the petitioner have not been terminated. In fact, no punitive action has been taken by the company pursuant to the enquiry. The Petitioner had rushed to the Court immediately after the enquiry was completed and the findings of the enquiry officer were furnished to the petitioner, instead of submitting his objections to the findings of the enquiry officer. Protesting against the findings, the petitioner filed complaint (ULP) No.146 of 1998. As aforesaid, ad-interim relief was granted to the petitioner, not to terminate his services, which order continued from 27.2.1998. It was vacated by the order of 17.1.2003 passed in complaint (ULP) No.146 of 1998. The Labour Court while vacating the order directed the respondents not to impose the punishment of dismissal or discharge till 31.1.2003.

4. Before that date, on 27.1.2003, the petitioner filed the present complaint i.e., Complaint (ULP) No.28 of 2003. An order of status quo was passed which continued till the interim application filed by the petitioner in the complaint was rejected on 24.7.2005. A revision application was then filed by the petitioner, being Revision Application No.140 of 2003 which met with the same fate. However, since the order of status quo continued even after the interim relief application was rejected by the Labour Court on 24.7.2005, the Industrial Court has continued the order of status quo till 6.8.2007. Thereafter by an order of this Court dated 6.8.2007, the petitioner continues in service, albeit under suspension.

5. It is submitted on behalf of the petitioner that the very fact that the petitioner has been under suspension for over 10 years would indicate the malafides of the company. Reliance is placed on the judgment of the Division Bench of this Court in the case of *Suresh Dagdu Badgujar v/s. The State of Maharashtra & Ors.*, **1989 II CLR 154 HC BOM.** This Court has observed that care and caution should be observed that an enquiry should be held expeditiously when an employee is suspended pending inquiry. This Court has observed that suspension remains a hanging sword upon the delinquent

and his family with all its effects and consequences. In the present case, there is no doubt that the petitioner continued under suspension from 1997 onwards. However, it is obvious that it is because of the orders of status quo passed by the Labour Court and the Industrial Court from time to time on the application of the petitioner. Had the petitioner not obtained these orders, in all probability, the company would have completed the action against the petitioner. The enquiry has been completed on 22.6.2001. A copy of the findings of the enquiry officer have been submitted on 13.12.2001. The petitioner has chosen not to submit his objections and comments in respect of the report of the enquiry officer. In these circumstances, the submission of the learned advocate for the petitioner that 10 years of suspension would be sufficient to the misconduct alleged against cannot be accepted. The judgment of the Division Bench of this Court in *Suresh Dagdu Badgujar (supra)* would have no application as in that case, the enquiry had not commenced for two years although a chargesheet was issued to the workman.

6. In my view, the orders of the Labour Court and the Industrial Court cannot be faulted. The petitioner may submit his comments and objections to the report of the enquiry officer within four weeks from today. The company will consider the reply filed by the petitioner

while deciding whether to impose any punishment on him. The company will also bear in mind the fact that the petitioner has been suspended from 1997 onwards while

decides to either dismiss or discharge the petitioner, it shall keep such an order in abeyance for a period of 15 days from the date the order is served on the petitioner. The petitioner may then challenge that order. If the Petitioner does challenge the order the Labour Court will decide the dispute and interim application on its own merits, regardless of any observations made by the Labour Court in the orders passed in the two complaints already filed by the Petitioner.

7. Petition disposed of accordingly.